

## REMARKS

Examiner is kindly requested to take notice that the attorney docket number has changed from "Flarion-52 & 65 App (80)" to "060556".

Claims 1-28 and 30-53 are pending in the present application. Applicants believe that after entry of the above amendments, the present application is now in condition for allowance for which prompt and favorable action is respectfully requested.

## Claim Objections

Claims 1-28 and 30-53 were objected to because of informalities. The informalities have been corrected with the changes suggested by the Examiner. The objections to dependent claims 2, 3, 7, 8, 10-12, 15-17, 18-24, 28, 40, 41 and 47 as being dependent on objected base claims are now moot in view of the amendments made to their respective base claims.

## Response to Claim Rejections – 35 USC §102

**A single reference must present each element to establish a prime facie case of anticipation. Reference is made to M.P.E.P. §2131:**

TO ANTICIPATE A CLAIM, THE REFERENCE MUST TEACH EVERY ELEMENT OF THE CLAIM

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). >"When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art." *Brown v. 3M*, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir.

2001) (claim to a system for setting a computer clock to an offset time to address the Year 2000 (Y2K) problem, applicable to records with year date data in "at least one of two-digit, three-digit, or four-digit" representations, was held anticipated by a system that offsets year dates in only two-digit formats). See also MPEP § 2131.02. "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). Note that, in some circumstances, it is permissible to use multiple references in a 35 U.S.C. 102 rejection. See MPEP § 2131.01.

The Official Action rejected claims 4, 14, 25, 27, 28, 36, 37, 50 and 51 under 35 U.S.C. 102(e) as being anticipated by US 2001/0034228 (hereinafter "Lehtovirta"). Applicants respectfully traverse these rejections. Claims 4, 14, 25, 50 and 51 are independent claims. Claims 27, 28, 36 and 37 depend on claim 25.

Independent claims 4, 14, 25, 50 and 51 require the claim element "end node to initiate a fault response operation" that is not disclosed, taught or suggested in Lehtovirta. An end node is a mobile device or mobile wireless device (i.e., user equipment (UE)) as opposed to a network node. *See present application, Abstract; p. 3, lines 31-32; p. 6, lines 22-23; and p. 7, lines 8-12. Also see Figures 1 and 5.*

In contrast, in Lehtovirta, the network node, not the end node, initiates a fault response operation in the event of a failure. In Lehtovirta, "network node" is sometimes denoted simply as "node" while "user equipment" is referred to as "one or more other nodes." "[T]he node sends a reset or similar type message to one or more other nodes such as RNCs, base stations, UEs, and other core network nodes (block 104)." *Lehtovirta, paragraph 0043, Emphasis added.*

Lehtovirta discloses that a failure is detected by the network node. "A failure is detected in a network node (step 100). A network failure includes any type of failure that affects the

node's ability to support or otherwise render service to a particular connection to a user equipment.” *Lehtovirta, paragraph 0041; Emphasis added.*

Lehtovirta discloses two types of failures: entire and partial failures. In an entire failure, the entire node is reset and a reset message is sent to the user equipment (i.e., the end node). In Lehtovirta, it is the network node, and not the end node, that initiates the fault response operation following detection of an entire failure. “Of course, such failures include situations where an entire node is disabled, but they also include any partial failure in the node... A decision is made in the node whether the failure is a partial failure (block 102). If not, it may be appropriate in some circumstances to assume that the entire node has failed and must be reset. Accordingly, the node sends a reset or similar type message to one or more other nodes such as RNCs, base stations, UEs, and other core network nodes (block 104).” *Lehtovirta, paragraphs –0041- 0043.*

In the case of a partial failure, Lehtovirta also teaches that it is the network node, and not end node, that initiates the fault response operation following failure detection. The network node then sends a fault response message to one or more nodes, e.g., user equipment or end node. “If a partial failure is detected in block 102, e.g., one of plural processors is restarted, the node sends a message to one or more nodes [such as RNCs, base stations, UEs, and other core network nodes (block 104)] that selectively indicates which connections are affected by the failure and should be released.” *Lehtovirta, paragraph 0043; Emphasis added.*

Thus, Lehtovirta discloses, teaches and suggest that the network node initiate a fault response operation following detection of failure, teaching away from the claim element requiring the end node to initiate a fault response operation. “As with FIG. 9, a failure is detected in a network node (block 110), and a decision is made whether the failure is a partial or complete

failure (block 112). If the failure is node-wide, a node reset message is sent to one or more nodes (block 114) [such as RNCs, base stations, UEs, and other core network nodes (block 104)]. On the other hand, for a partial failure, the node forms a list of UEs and connections (in this case radio access bearers) specifically affected by the partial failure. The list could include for example UE identifiers, (e.g., UE's IMSI), and RAB identifiers (block 116). The list is then sent to one or more nodes (block 118).” *Lehtovirta, paragraph 0044; Emphasis added.*

Independent claims 4, 14, 25, 50 and 51 and dependent claims 27, 28, 36 and 37 include the claim element “end node to initiate a fault response operation.” Consequently, a prima facie case cannot be supported. Applicants submit that the claims 4, 14, 25, 27, 28, 36, 37, 50 and 51 are not anticipated by Lehtovirta, and withdrawal of the 35 U.S.C. 102(e) rejection based thereon is respectfully requested.

### **Response to Claim Rejections – 35 USC §103**

#### **MPEP §2143.03 All Claim Limitations Must Be Considered**

"All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

The Official Action rejected claims 1-3, 5-12, 18, 22, 23, 30, 33, 39, 40, 42-44, 46-49, 52 and 53 under 35 USC § 103(a) as being unpatentable over US 2001/0034228 (hereinafter “Lehtovirta”) in view of U.S. Patent No. 6,578,085 (hereinafter “Khalil”). Claims 13 and 34 are rejected under 35 USC § 103(a) as being unpatentable over Lehtovirta in view of US 2004/0081086 (hereinafter “Hippelainen”). Claims 15-17 and 24 are rejected under 35 USC §

103(a) as being unpatentable over Lehtovirta in view of Khalil as applied to claims 6 and 22 above, and further in view of US 2003/0016629 (hereinafter “Bender”). Claims 19-21 and 41 are rejected under 35 USC § 103(a) as being unpatentable over Lehtovirta in view of Khalil as applied to claim 18 above, and further in view of U.S. 5,390,326 (hereinafter “Shah”). Claim 31 is rejected under 35 USC § 103(a) as being unpatentable over Lehtovirta in view of U.S. 6,178,327 (hereinafter “Gomez”). Claim 32 is rejected under 35 USC § 103(a) as being unpatentable over Lehtovirta in view of Gomez as applied to claim 31 above, and further in view of Khalil. Claim 35 is rejected under 35 USC § 103(a) as being unpatentable over Lehtovirta in view of Shah. Claim 38 is rejected under 35 USC § 103(a) as being unpatentable over Lehtovirta in view of US 2004/0049565 (hereinafter “Keller”). Claim 45 is rejected under 35 USC § 103(a) as being unpatentable over Lehtovirta in view of Khalil as applied to claim 44 above, and further in view of Hippelainen. Applicants respectfully traverse these rejections.

As presented herein, independent claims 1, 6, 13, 31, 34, 46, and 48 require the element “end node to initiate a fault response operation” that is not disclosed, taught or suggested in Lehtovirta as discussed above. Independent claim 39 which recites a mobile communications device (i.e., an end node) has been amended to require the claim element “means for initiating a fault response operation.” Independent claim 42 has been amended to recite a mobile communications device and to require a processor module “for initiating a fault response operation”. Independent claim 52 which recites a mobile communications device has been amended to require a processor “for initiating a fault response operation”. The elements of claims 39, 42 and 52 “for initiating a fault response operation” by the mobile communications device are not disclosed, taught or suggested in Lehtovirta as discussed above.

Similarly, the other cited references, Khalil, Hippelainen, Bender, Shah, Gomez and Keller also do not disclose, teach or suggest the aforementioned elements recited in independent claims 1, 6, 13, 31, 34, 39, 42, 46, 48 and 52, and their respective dependent claims.

In fact, Khalil is cited by the Examiner for teaching “generating, from Mobile IP signals directed to the end node or transmitted by the end node.” *Official Action*, p. 6. Hippelainen is cited by the Examiner for teaching “releasing a resource link and a Mobile IP registration operation in response to the fault.” *Official Action*, p. 12. Bender is cited by the Examiner for teaching “sending a status request signal from a first network node to a second network node ... and receiving a response to the status request signal.” *Official Action*, p. 13. Shah is cited by the Examiner for teaching “periodically sending fault signals to a plurality of end nodes at preselected time intervals ... and operating at least some of the plurality of end nodes to monitor for fault signals at the preselected time intervals but not between the preselected time intervals.” *Official Action*, p. 15. What the Examiner refers to as “end nodes” in the statement above are “agent modules” as disclosed in Shah.

Gomez is cited by the Examiner for teaching “the mobile node including the list of nodes and fault responses.” *Official Action*, p. 16. It should be clarified that Gomez teaches a “neighbor cell list” from which a neighbor cell may be selected for use in routing signals. “The method begins by first receiving 400 a fault message and neighbor cell list. The mobile station then determines 402 if, based on the fault message, the desired communications mode or service is available from the serving cell. If the serving cell can provide the desired communications service, the mobile continues 404 as normal. If the desired service was one of the faulted services, the mobile station determines 406 if any of the neighbor cells can support the desired service, based on the information in the neighbor cell list. If none of the neighbor cells listed can

support the desired service, then no service 408 is available. If at least one neighbor cell can provide the desired service, then the mobile station begins scanning the frequencies corresponding to the neighbor cells, as indicated in the neighbor cell list, to determine 410 the strongest neighbor cell signal, such as a by received signal strength indicator (RSSI), as is well known in the art. Subsequently, the mobile station connects 412 to the strongest neighbor cell, and continues as normal.” *Gomez, Col 5:6-24*.

And, Keller is cited by the Examiner for teaching “that a service outage is a failure of the system, which is considered a fault.”

Thus, the addition of Khalil, Hippelainen, Bender, Shah, Gomez and/or Keller cited in the rejection of the claims does not overcome the deficiencies noted with respect to Lehtovirta. And, the combination of Lehtovirta with one or more of the cited references does not render the rejected claims obvious. For at least these reasons, Applicants respectfully request reconsideration and allowance of the claims.

## **CONCLUSION**

For the reasons stated above, the prior art references cited by the Examiner do not anticipate and do not teach, suggest or make obvious the pending claims 1-28 and 30-53. Thus, Applicants respectfully request withdrawal of the 35 U.S.C. 102(e) and 35 U.S.C. 103(a) rejections based thereon.

### REQUEST FOR ALLOWANCE

In view of the foregoing, Applicants submit that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Please charge Deposit Account No. 17-0026 for any fees associated with the Petition for a Two-Month Extension of Time and any other fees that may be due regarding this amendment. Applicants encourage the Examiner to telephone the Applicants' attorney should any issues remain.

Respectfully submitted,

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